

## **JEFFERSON COUNTY COMMISSIONERS ROAD MEETING**

**April 9, 2007 - 6:30p.m.**

**Whitehall High School, Whitehall, Montana**

**Present:** Commissioners Lythgoe, Notbohm and Weber; Eric Tolf, Forest Service; Tom and Twila Harrington, Bob Casagrande, Rich Parks, Jamie Ballard, Wally Hustad, Peter and Janice Bogy, Tim Mulligan, John Kountz, Doug Salsbury, Vincent Carey, John Carey, Frank Carey, Bob Sims, Kerry White, Charlotte Trolinger

Meeting was called to order at 6:40pm. Commissioner Weber advised that the presentation that he would be going through was available for the public. Commissioner Lythgoe passed out the presentations. Commissioner Weber advises that this meeting was about the RS2477 Resolution. He explains that tonight they will go through what RS2477 is; what the proposed resolution says, and then they will accept comments and questions from the public.

Commissioner Weber then goes through his power point presentation and opens up the floor for comment.

Wally Hustad, Clancy, MT asks Ken about the process and states that despite what they (Commissioners) say, that they have already started the process. Ken says that yes, we have begun the process. Mr. Hustad asks about the \$130,000.00? Commissioner Weber advises that we have allocated those funds yet. Mr. Hustad asks if the contract is a signed agreement? Ken states that yes it is. Mr. Hustad then asks about the \$4,000.00 per month cap and what if this process lasts for years? Commissioner Weber states again that yes, we have already started the process and that if this resolution passes, this sets up the criteria to do that. Mr. Hustad then asks if the community is obligated to that contract? Ken states yes, we are. Commissioner Weber states that it's fair to say that we have started researching this issue.

Peter Bogy asks was the contract signed, but no funds were set aside? Commissioner Weber states that we have obligated funds, with hourly rates, scope of work etc., but there has not been an allocation or a cap yet. In the contract there is a monthly cap - that is it can be ended in 30 days by either party. Commissioner Lythgoe states that they have talked about using PILT and/or metal mines funds. Mr. Hustad asks for a copy of the agreement? Commissioner Weber advises that he does not have a copy with him but that he can request a copy from the courthouse.

Bob Sims asks what the Forest Service criteria is? Commissioner Weber advises that the outline sets forth what the Forest Service wants, i.e., use of road, etc. and the history of that road. If there is a historic right-of-way within that study area. Bob Sims asks for written documentation from the forest service as to the criteria. Commissioner Weber states that ex-secretary Gail Norton - Department of Interior - advised that these are the criteria and that state law will play into that as well. Bob Sims states that it appears that the forest service has all the RS2477 meeting April 9, 2007

cards. Commissioner Weber states that they have the ability to look at the information but any final say would come from a judge. Sims asks if you have public roads on public land how do they not meet the criteria? Commissioner Weber states that would depend on when the right-of-way came into existence. Sims then asks what if they built a road to log, would that be a public road? Commissioner Weber advises that it depends, and offers an example. Bob Sims then asks that they (Commissioners) get this forest service information in writing prior to passing this resolution.

John Kuntz asks if this has already been done? Commissioner Weber advises no, that some research has been done on some of the roads, but that is no where near complete. John Kuntz asks if they can do the roads on a case by case basis. Commissioner Weber states that yes, that is their intent. Mr. Kuntz then asks about private property rights and will private property rights be honored and what if a right-of-way exists. Commissioner Weber stated just like highway 69 goes through his property right now. John states that you guys can't maintain the roads you have now - how can you do this and where are we going with this? Commissioner Weber states that they would be non-maintained county road. John Kuntz asks about damage to private property and who is going to pay for this? He states that if you want roads, that's great, but you have to maintain them. Asks again about private property rights? Commissioner Weber states that private property rights will be maintained to the best of their ability.

Tim Mulligan asks if there will be a public process for each road or will it be just a commissioner decision? Commissioner Weber states that every decision made is a public decision, unless it's personnel issues. Tim Mulligan then asks if it will be a formal public process for each road, or just a county weekly meeting covering 37 roads? Commissioner Weber then states that he can't answer that yet because they haven't adopted the resolution yet?

Wally Hustad then asks about the history of the county with respect to closing public access? He states that in his area they vacated a public highway with no compensation to private property owners and states that the general public did not know about any of that process. He states that on more than one occasion the Commissioners have closed public access. Commissioner Weber states that right-of-way decision was a court ordered decision and that a court order abandonment is one way to do that. Tim Mulligan asks what public land not reserved for public use means? Commissioner Weber explains and states that things have changed and are under BLM control and are reserved. Commissioner Weber states that each one (road) has to be looked at individually. Tim Mulligan then asks if County Attorney Matt Johnson has looked at this paperwork. John Kuntz states that his fear is that the Commissioners will come up with a list of roads and they (the public) will immediately start driving on the roads before its official and that will lead to damage to private property. Commissioner Weber says that we can't promise that we won't get sued or that abuses won't happen but that they will try and stop them to the best of their ability.

Tom Harrington asks the Commissioners for a ballpark figure to do this? Commissioner Weber states that they have no idea. Weber states that right now they have two areas of high interest - the Clancy Unionville area and the Whitetail\Pipestone area. He advises that those are the first to be looked at because they (Forest Service) are getting ready to finalize their plans for

that area

Peter Bogy asks if you have private property in the county, a Forest Service easement, a historically maintained road by the Forest Service and then with aid from the county - where does that fall under a RS2477 determination? Asks do you guys look at dates or how does that work? Commissioner Weber states that the historic maintenance has less to do with it than the time-frame.

Commissioner Notbohm states that the Forest Service took it upon themselves to shut down county roads in the Elkhorns when they made it a wildlife area. He states that the Forest Service has advised that they intend to close another road up by the Jefferson City area and that this whole process is to stop the closing of public roads.

Bob Sims states that the Commissioners are biting off more than they can chew and that there is no reason to have access across private land to get to federal lands because you can't go anywhere since the feds have closed their access. He states that once you have solved the federal issue then ask for these easements. He further advises that he believes that this is an open ticket to spend tax-payer money.

Wally Hustad states that there is a lot of discussion that needs to take place before this passes. He states that he doesn't want to give the commissioners taxpayer money for this project and ask what the big rush is? Wally Hustad states that we have limited resources and that the commissioners obligation is to manage tax-payer money very carefully. He advises that he feels that the commissioners have the cart before the horse and again states that he feels this decision was made months ago.

Peter Bogy states that the funds are from the metal mines funds, not general funds. Bob Sims states that metal mines are public money.

Tim Mulligan asks if the resolution is adopted, will the county assert that we own all the roads or will we go road by road? Commissioner Weber states yes, absolutely they will go road by road.

Commissioner Lythgoe states that they had this conversation with the Helena Forest Service and BLM and they said that if we can show evidence that this public right-of-way existed and that it was not a forest service road that they can make that determination locally and that it wouldn't have to go to court. Lythgoe states that hopefully they meant it when they said it. Commissioner Lythgoe again reiterates that this will not be a blanket resolution - it will be road by road. Commissioner Lythgoe states that he personally, is not willing to spend a lot of money in courts to pursue this and that if we can't come to some agreement as indicated by BLM, then he (Tom) is not willing to spend that kind of money in court. Commissioner Lythgoe states that he doesn't believe that we have that kind of money.

Tim Mulligan states that if this process is done on a road by road basis then he would feel more comfortable. He states that he would like to change the last sentence in the resolution and that he wants a clearly established protocol for each road.

Bob Sims states that the BLM can't cut down a tree by itself, let alone promise what they are promising. Bob states that he wants the commissioners to pick one road and see if they can do this. Commissioner Weber states that if we pursue this, we will pick a road to determine if this process works.

Kerry White states that there is an issue by Cooke City right now regarding holdings and easements he encourages the Commissioners to prioritize their roads because the forest service is only obligated to provide walking access. Mr. White states that he has looked into this issue and thinks its a good idea for the county to take a look at this and that he would rather deal with local county commissioners on issues like this rather than Washington DC. He states that he thinks we should try to keep it local and don't go overboard on spending money and prioritize the roads.

John Kuntz states that his worry is does the county really own any roads? He states that there is no actual land ownership by the county, just easements. He states that his concern is that the commissioners are leaving the private property owners out of this deal and that private property owners should have more say. He doesn't want to deny the public access here and there - but landowners need to have input. He states that the Homestake area is out of hand with the public access and to please have landowners involved when a decision is made. He states that the public always wins these type of cases but there is no responsibility from the public - that the public throws trash, make holes, tears up roads, etc.

Commissioner Lythgoe states that he appreciates the comments and as far as dealing with private property owners - what Mr. Kuntz said makes sense. Commissioner Lythgoe states that every year the forest service closes more and more roads and that is not appropriate. He states that public access is huge in order to hike and hunt.

Doug Salsbury questions Commissioner Weber about page 4 of resolution which states "reverts back to the state" and states that he doesn't agree with that language and asks why its in there. Commissioner Weber explains what it means and states that the interpretation of the language is still being hammered out in federal courts.

Kerry White asks if we have an active resource management plan or committee? If not should we be setting this up? Commissioner Weber states they have some similar type of committees like CTAC, MTAG, and even JLDC, working towards this, but no there is no official designated resource council and that is something they may have to look at forming

Commissioner Lythgoe states that in order to be successful in this project that someone has to do the research and that research is very onerous and that it would be hard for a volunteer group to do. He states that each road research project is significant and that is the reason for the contract agreement. He also advised that they are not just doing the roads they are doing other things as well involving mining, etc. Commissioner Lythgoe states that the commission has made the decision to really look into this project - but that no final decision that they are going to do this has been made yet.

Bob Sims wants the commissioners to agree that they will find one road to do to see if this works. Commissioner Weber says that they cannot make this decision tonight, that this is an informational meeting only and that no decisions can be made tonight. Commissioner Weber states that they need to set up a separate meeting to make that one road decision. Commissioner Lythgoe states that he believes that the one road idea has some validity but maybe they should take three or five roads. Bob Sims states that he is okay with that plan.

Commissioner Lythgoe states that he wants to clarify his position that he is not in favor of supporting litigation, but if that it becomes an issue and we have all the proof that this is our road and the forest service says no - then we may have to litigate one or two roads to see what happens.

Wally Hustad again states that he thinks the commissioners have the cart before the horse and that he is not in favor of proceeding at this time. He also asks what the County Attorney's position is on this and comments about the "can-of-worms" quote in the paper. Commissioner Weber states they are following the correct procedures according to our county attorney.

Charlotte Trolinger states that the county attorney said in a previous meeting that we should do one at a time; she states that she is not encouraging of this process.

Tom Harrington states that the commissioners need to take a look at resources and look at the dollar amounts. He states that he has concerns over metal mines money and that this type of project can take up a lot of money. He encourages the Commissioners to have an exit strategy.

Commissioners adjourned.

**ATTEST:**

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**BONNIE RAMEY**  
**CLERK AND RECORDER**

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**KEN WEBER, CHAIR**

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**TOMAS E. LYTHGOE, COMMISSIONER**

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**CHUCK NOTBOHM, COMMISSIONER**